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10/046,541

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Gavriel Meron

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EXAMINER

CWERN, JONATHAN

ART UNIT

PAPER NUMBER

3737

MAIL DATE

DELIVERY MODE

02/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/046,541 | Applicant(s) MERON ET AL. | |
| | Examiner Jonathan G. Cwern | Art Unit 3737 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51,53-55,60 and 63-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51,53-55,60 and 63-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/19/08 and 12/15/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 51, 53-55, 60, and 63-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouchi (US 6547723) in view of Ueda et al. (US 5681260).

Ouchi shows a fully-swallowable endoscopic system. The device has two hard portions, at opposite ends. Each hard portion has an illumination window, an objective optical system (this is interpreted as the claimed "lens"), an image sensor, and an LED (illumination source). The lens is positioned behind the optical windows, between the image sensor and the window (column 5, lines 34-67 and Figure 2). The device also

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contains a radio-transmitter for transmitting the acquired image data to an external device (column 7, lines 43-67). An internal power supply is used to provide power to the device (column 5, lines 55-67 and column 11, lines 15-17). Ouchi fails to show a plurality of illumination sources corresponding to each imager, that the windows are dome shaped, and that the device is capsule shaped.

Ueda et al. disclose a guiding apparatus for guiding an insertable body within an inspected object. One embodiment of the device comprises a capsule endoscope. Ueda et al. teach that one imager (CCD) is used along with multiple LEDs (Figure 27 and column 18, lines 8-38).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used a plurality of LEDs with each imager, as taught by Ueda et al. in the device of Ouchi. The benefits of multiple light sources are old and well known in the art. Additional light sources can provide for a larger sized area to be illuminated, or a differently shaped area to be illuminated. They can be used to illuminate the area more brightly than a single source. Multiple light sources have also been used to provide different wavelengths of light which can be analyzed.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the device of Ouchi to include those features. In the absence of any showing of criticality or unexpected results, changing the size and/or shape of the device is an obvious modification. Making the windows dome shaped so that the device is more round may allow it to pass easier through the patient, as well as by making the device a capsule shape (see MPEP 2144.04).

It should be noted that Ouchi discusses problems related to capsule type endoscopes in column 1, lines 33-54, however this refers to tethered endoscopes, in which a portion of the endoscope is still outside of the patient. Ouchi seeks to overcome problems related to such endoscopes by a “fully-swallowable” system in which the entire system is within the patient. Therefore, Ouchi does not teach away from modifying the device to make it capsule shaped.

While Ouchi does not go into specific detail on the type of radio transmission used in the device, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used any type of transmission known in the art to transmit signals from the imagers to the external receiver, such as a serial transmission. In addition, even if Ouchi did not use serial transmission, lacking any further criticality or unexpected results, the transmission of Ouchi is a suitable equivalent as the image signals are successfully transmitted to the external device, achieving the same end result.

Response to Arguments

Applicant's arguments with respect to claims 51, 53-55, 60, and 63-66 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Cwern whose telephone number is (571)270-1560. The examiner can normally be reached on Monday through Friday 9:30AM - 6:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jonathan G Cwern/
Examiner, Art Unit 3737

/BRIAN CASLER/
Supervisory Patent Examiner, Art
Unit 3737